

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0482
Utility Receipts Tax
For Tax Years 2003-05

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Utility Receipts Tax—Interstate Commerce.

Authority: IC § 6-2.3-4-2; IC § 6-8.1-5-1.

Taxpayer protests the imposition of utility receipts tax on receipts derived from interstate commerce.

STATEMENT OF FACTS

Taxpayer is a telecommunications provider. Taxpayer provides land based long distance phone services to individuals and business nationwide. Taxpayer self-reported its Utility Receipts Tax (URT) on timely filed annual URT returns. Pursuant to an audit, the Indiana Department of Revenue (Department) issued a refund of URT for the 2003-2005 tax years. The Department found that Taxpayer had over-reported its receipts that were subject to the URT and lowered the URT assessment. Taxpayer protested this assessment asserting that URT was imposed upon receipts derived from interstate commerce. An administrative hearing was held, and this Letter of Findings results.

I. Utility Receipts Tax—Interstate Commerce.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found that Taxpayer had over-reported its receipts that were subject to the URT and lowered the URT assessment. Taxpayer protested this assessment asserting that URT was imposed upon receipts derived from interstate commerce, which are exempt.

IC § 6-2.3-4-2 provides:

Gross receipts derived from business conducted in commerce between Indiana and either another state or territory or a foreign country are exempt from utility receipts tax to the

extent the state is prohibited from taxing the gross receipts by the Constitution of the United States.

Taxpayer provided sufficient information to conclude that the Department assessed tax on both taxable and exempt interstate and intrastate receipts. The Department will perform a supplemental audit examining the accounts that Taxpayer has shown contain both exempt and taxable interstate and intrastate receipts. Therefore, Taxpayer's protest is sustained, subject to the results of a supplemental audit, to the extent that its documentation demonstrates the Department assessed URT on the receipts derived from activities in interstate commerce on which the United State's Constitution prohibits the Department accessing URT. Accordingly, Taxpayer's protest is denied, subject to the results of a supplemental audit, to the extent that its documentation demonstrates the Department assessed URT on receipts derived from activities within Indiana and on receipts derived from interstate activities on which the United State's Constitution does not prohibit the Department accessing URT.

FINDING

Taxpayer's protest is granted in part subject to the results of a supplemental audit.